IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8822 of 2000

For Approval and Signature:

Hon'ble CHIEF JUSTICE MR DM DHARMADHIKARI
and
Hon'ble MR.JUSTICE M.S.SHAH

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

RAJHANS METALS LTD.

Versus

SALES TAX OFFICER DIV.-1 OR HIS SUCCESSOR IN OFFICE

Appearance:
MR RD PATHAK FOR MR NAYAN A SHETH for Petitioners
MR RC KODEKAR, AGP for Respondents

CORAM : CHIEF JUSTICE MR DM DHARMADHIKARI
and
MR.JUSTICE M.S.SHAH

Date of decision: 11/12/2000

CAV JUDGEMENT

(Per : MR.JUSTICE M.S.SHAH)

In this petition under Article 226 of the Constitution, a Public Limited Company and its Director (hereinafter referred to as "the petitioner") have challenged the letters dated 28.4.2000 and 4.5.2000 (Annexure "A/3" and "A/4") from the Sales Tax Officer, Division I, Jamnagar calling upon petitioner-Company to pay different amounts payable under the Gujarat Sales Tax Act, 1969 and the Central Sales Tax Act, 1956. The petitioner has also challenged the demand notices dated 30.6.2000 (Annexures A/12(1) and A/12(2)) calling upon the petitioner to produce evidence in support of the returns/declarations filed by the petitioner and to produce all the account books for the relevant period together with bill books and vouchers.

2. The facts leading to filing of this petition, briefly stated and as averred by the petitioner, are as under :-

2.1 The petitioner is in the business of extrusion of copper and copper alloys. The petitioner is a dealer registered under the Gujarat Sales Tax Act, 1969 (hereinafter referred to as "the Local Act") and also registered as a dealer under the Central Sales Tax Act, 1956 (hereinafter referred to as "the Central Act"). The State Government issued resolution dated 27.1.1993 (Annexure A/1(1)) for providing incentives to the industrial undertakings to invest in the State for generating electrical power using wind energy. The resolution contained a scheme for granting incentives like exemption from electricity duty and sales tax benefits. The sales tax incentives were offered under another resolution dated 27.1.1993 (Annexure A/1(2)).

2.2 The petitioner claims that relying upon the said policy, the petitioner established a wind farm at Navadra, District Jamnagar by investing a sum of Rs.3.22 crores (approx.) by 16.3.1996 and submitted an application to the Commissioner of Electricity for granting eligibility certificate. The Commissioner of Electricity granted certificate dated 14.12.1996 (Annexure A/2) certifying that the petitioner had made eligible investment in the wind farm project to the extent of Rs.2.95 crores (approx.) and is consequently entitled to the sales tax deferment benefit to the extent of Rs.1.47 Crores (approx.) during the period between 16.3.1996 and 15.3.2002 or the date on which the amount of benefit gets exhausted, whichever is earlier.

2.3 In the meantime, the State Government issued another Government Resolution dated 4.4.1996 (Annexure

A/8). The relevant portion of the said resolution reads as under :-

" Incentives Scheme for Wind Power generation by Private Companies.

GOVERNMENT OF GUJARAT
FINANCE DEPARTMENT

G.R. No. GST-1094-11129-TH,
Sachivalaya, Gandhinagar,
Date 4-4-96

Ref :

1.G.R.E.&P.D. No.EDA-1092-M(i)-8(1)E dt.27.1.93
2.G.R.E.&P.D. No.EDA-1092-M(i)-8(2)E dt.27.1.93
3.G.R.E.&P.D. No.EDA-1092-M(i)-8(2)E dt.13.6.94

RESOLUTION

1. ... ...

2. ... ...

3. ... ...

4. The eligible unit shall fulfil the conditions specified hereunder and further conditions as may be laid down from time to time.

5. Conditions :-

(1) to (6) ... ...

(7) The specified industrial unit shall be entitled to the tax deferment upto the quantum and the time limit specified in the certificate of deferment. The quantum of deferment shall not exceed 50% of the eligible investment to be determined by the appropriate authority and the deferment shall be available for a period not exceeding six years.

(8) Amount so deferred will be recovered in six annual instalments by the Sales Tax Department after the expiry

of the relevant period of time limit during which deferment is available. No interest will be charged on the amount of sales tax so deferred.

(9) to (21) ... ...

(22) The limit of deferment shall be arrived at as follows :-

(i) The aggregate amount of Sales Tax of General Sales Tax which is leviable on the sales.

(ii) Aggregate amount of Central Sales Tax which would have become leviable under the provisions of Section 8 of the Central Sales Tax Act.

(iii) Aggregate amount of tax at the rate of 4% or the rate applicable under the Gujarat Sales Tax Act, 1969 whichever is lower on the sale price of the goods despatched by the eligible unit to his own place of business or of his agent at any place within India but outside State of Gujarat or sales there.

(23) ... ...

Explanation : for the purpose of this G.R.

(1) "appropriate authority" means Commissioner of Electricity, Gujarat State, Ahmedabad.

(2) "Competent authority" means the Assistant Commissioner of Sales Tax having jurisdiction over the place of business of the specified industrial unit.

(3) ... ...

(4) ... ..."

(emphasis supplied)

On the basis of the said Government Resolution, the Commissioner of Sales Tax also issued circular dated 1.5.1996 (Annexure A/9), the relevant portion whereof reads as under :-

" Public Circular No. GUJKA/1-J/96-97/JA-966/550
dated 1.5.1995

Sub : Regarding the Sales Tax Deferment Scheme
for the units holding Wind Farms

Ref : (1) .. ..
(2) .. ..

(1) to (23) .. ..

(24) Under this scheme, the calculation of tax deferment in the case of the certified unit establishing wind farm and holding Eligibility Certificate under the Sales Tax Deferment Incentive under this Scheme shall be calculated as under :-

(a) Sales tax or General sales tax payable by the unit under the Local Act on the local sales.

(b) Central sales tax payable by such unit on the sales of inter-State trade or commerce under the Central Act.

(c) 4% of the sale price of the goods despatched to outside the State branch or agent of such unit or if the rate of Local sales tax is less than 4%, the amount arrived at such rate.

(25) & (26) ... ...

The above details may be brought to the notice of your members and oblige."

(emphasis supplied)

2.4 On the basis of the aforesaid Government Resolution and Circular dated 4.4.1996/1.5.1996, the Sales Tax Officer, Jamnagar addressed the impugned communications dated 28.4.2000 (Annexure A/3) pointing out that as per the aforesaid Government Resolution and the Circular, the tax payable on local sales and inter-State sales as well as 4% of the value of the goods transferred to the branch or agent outside the State is to be calculated for determining whether the sales tax

exemption amount is exhausted or not, but as per the returns filed by the petitioner for the period from July, 1999 onwards, the petitioner has not included 4% of the value of the goods transferred to the branch/agent outside the State. The Sales Tax Officer further pointed out that the petitioner has exceeded the sanctioned amount of Rs.1,47,52,829/- as per the deferment certificate in September, 1999 and, therefore, the tax payable as per the returns for the month of September, 1999 is required to be paid. The Sales Tax Officer called upon the petitioner to pay the local sales tax for the period from September, 1999 to December, 1999 quantified at Rs.1,59,487/- and Central sales tax for the said period quantified at Rs.12,60,385/- plus interest thereon under Section 47(4A) for the period upto 30.4.2000. Similarly, the petitioner was called upon to pay purchase tax for the relevant period.

By the subsequent letter dated 4.5.2000 (Annexure A/4), the Sales Tax Officer called upon the petitioner to pay the sales tax dues for the months of January and February, 2000 qualified at Rs.1,25,000/- plus interest thereon.

2.5 Upon receipt of the aforesaid letters, the petitioner submitted its reply dated 11.5.2000 through their learned advocate objecting to the payment on the ground of promissory estoppel and contended that the petitioner's case is governed by the resolution dated 27.1.1993 and not by the subsequent resolution dated 4.4.1996. The petitioner submitted similar reply dated 16.5.2000 in response to the second letter dated 4.5.2000 of the Sales Tax Officer. The Sales Tax Officer sent his communication dated 23.5.2000 to the petitioner rejecting the submissions made in the petitioner's replies and reiterating the demand as per the letters dated 28.4.2000 and 4.5.2000. Thereupon the petitioner filed the present petition.

3. In response to the Rule issued by this Court, affidavit in reply is filed by Mr GH Bhatt, Deputy Commissioner of Sales Tax, Ahmedabad.

3.1 It is submitted that the petition suffers from delay and latches as the resolution dated 4.4.1996 is sought to be challenged in the petition filed in June, 2000. It is further contended that the condition, which provided that in computing the quantum of sales tax deferment availed of, there shall be taken into account, inter alia, aggregate amount of tax at the rate of 4% or at the rate applicable under the Local Act, whichever is

lower on the sale price of the goods despatched by the petitioner to its own place of business or of its agent at any place in India outside the State of Gujarat for sale there, was also incorporated by reference in the deferment entitlement certificate dated 31.12.1996 issued by the Assistant Commissioner of Sales Tax.

3.2 It is further submitted that in the earlier schemes granting sales tax incentives also, condition identical with the condition impugned in this petition was imposed both in respect of incentive in the shape of exemption from tax as well as deferment of tax. The validity of such identical condition was challenged before this Court in Special Civil Application No.2810 of 1995 (Apollo Tyres Ltd. vs. Sales Tax Officer, 106 STC 218) and this Court upheld the validity of such condition and dismissed the petition.

3.3 It is submitted that the policy of granting sales tax incentives through sales tax exemption or deferment of sales tax is formulated by the State Government in the Finance Department and the said notifications are issued under Section 49(2) of the Sales Tax Act which empowers the State Government to exempt, subject to such conditions as it may impose, any specified class of sales or purchases from payment of the whole or any part of the tax, if it considers it necessary so to do in the public interest. Section 49(2) reads as under :-

"49. Exemptions.

(2) Subject to such conditions as it may impose, the State Government may, if it considers it necessary so to do in the public interest, by notification in the Official Gazette, exempt any specified class of sales or of specified sales or purchases from payment of the whole or any part of the tax applicable under the provisions of this Act."

3.4 It is further contended that the Government Resolution dated 4.4.1996 which is impugned in the present petition was issued well before the eligibility certified was issued by the Commissioner of Electricity in favour of the petitioner-Company on 16.12.1996 and the petitioner could have arranged its affairs accordingly on the basis of the resolution dated 4.4.1996. The petitioner went on filing returns claiming the benefit of deferment of tax without taking into account the goods transported to its own place of business or the place of

business of its agents in India but outside the State of Gujarat for sale there. It is further stated in the reply affidavit that assessments of the petitioner for the period from 1996-97 are pending and that if the quantum of goods transported outside the Gujarat are taken into account, the limit of deferment would be exhausted by the end of July, 1997 and the amount of deferred tax would be payable in six equal annual instalments, the first of such instalment being payable on 31.5.1998.

4. At the hearing of this petition, Mr RD Pathak, learned counsel for the petitioner submitted that the Government having issued the Resolution dated 27.1.1993 offering sales tax incentives for setting up wind farms in a backward area and the petitioner having acted upon the said promises and having commissioned the wind farm on 16.3.1996, the Government was estopped from changing the conditions of the sales tax incentives scheme and that the subsequent resolution dated 4.4.1996 cannot be made applicable to the industries which had already been set up before 4.4.1996 and in whose favour eligibility certificate was issued with effect from a date prior to 4.4.1996. Reliance has been placed on the decision of this Court in Civil Asbestos vs. State of Gujarat, (1995) 96 STC 154 and in Super Alloys Metals Pvt. Ltd. vs. State of Gujarat, (1993) 89 STC 519.

It is further submitted that in respect of the goods which were transported by the petitioner out of its manufactured goods to a place outside the State for being sold there, no sale took place within the State of Gujarat and, therefore, there was no liability to pay any tax in respect thereof. It is further submitted that these were also not sales in the nature of inter-State trade or commerce and no liability to pay Central sales tax arose in respect of these goods and, therefore, the sales outside the State effected by the petitioner could not have been considered for the purpose of computing the exemption limit as it sought to be done under the Resolution dated 4.4.1996.

5. On the other hand, Mr RC Kodekar, learned AGP appearing for the respondent authorities has submitted that when this Court has already upheld the validity of an identical condition which was a part of the earlier sales tax incentives scheme, there is no scope for interference with the impugned letters and demand notices. Strong reliance has been placed on the decision of this Court in Apollo Tyres Ltd. vs. Sales Tax Officer, (1997) 106 STC 218.

It is further submitted that in any view of the matter, the Government Resolution dated 4.4.1996 was issued well before the eligibility certificate was issued in favour of the petitioner on 14.12.1996 and, therefore also, the principle of promissory estoppel is not applicable.

6. Having heard the learned counsel for the parties, it appears that there is no dispute about the fact that the petitioner had set up the wind farm after issuance of the Government Resolution dated 27.1.1993 and before issuance of the Government Resolution dated 4.4.1996 in which the impugned condition was imposed.

In Apollo Tyres Ltd. vs. Sales Tax Officer, (1997) 106 STC 218, this Court had an occasion to examine the rationale of the condition which was identical with the condition impugned in the present case. The Court accepted the submissions made by the learned Additional Advocate General and recorded in para 9 of the judgment that by imposing the impugned condition no sales tax was levied on the sales that were effected outside the State; exemption from liability to pay tax or any other incentive could not have been claimed as a matter of right and it was open to the State Government to prescribe the limits of exemption by imposing such condition. By the impugned condition it was implied that the sales will be effected in Gujarat for the purpose of incentive limits and if the sales were effected outside Gujarat then the minimum revenue loss, that occurred to the State by virtue thereof, was to be adjusted towards the eligibility limit of the incentives. This was done by accelerating the limit as provided in the said condition, the effect of which was to deprive the specified manufacturer that much benefit of exemption; such a condition can never be said to be imposition of tax and it was only in effect and reality denial of exemption to the extent of revenue loss resulting from the sales effected by such manufacturer outside the State. When such conditions were incorporated in the eligibility certificate, it is not open to the petitioner to contend that it will enjoy the benefit of exemption and discard an important condition which went into fixing the entitlement limit of the incentives. The Court negatived the contention of the assessee that the method of arriving at the limit of the exemption by computing the revenue loss which could be occasioned by virtue of sales effected outside the State would amount to an imposition of tax by treating such sales as deemed sales within the State, for which no tax is leviable. The

Court held that the exemption from sales tax was granted under Section 49(2) of the Gujarat Sales Tax Act, 1969 and that the exemption from sales tax was obviously intended for the sales that could be taxed under the Act. This Court held in terms that the State is free to impose a condition that for earning exemption from payment of tax, the sale must take place within the State and that if the goods are sold outside the State the entitlement to the benefit of incentives will stand reduced to the extent of the revenue loss caused by such diversion. The benefit of incentives such as exemption or deferment implied that the sales were taxable and the benefit was intended on a condition that the sales upto upper limit will be such as were relatable to the exemption from payment of tax or deferment of tax collected. If such manufacturer chooses to sell all his goods outside the State in respect of which revenue loss to the State reaches the upper limit, no benefit of incentives was intended and the manufacturer was to be treated as having availed of the upper limit of such incentives. There is no tax payable in the State on sales which ware effected outside the State and it is only denial of exemption from payment of tax on the sale price of the goods which are diverted for sale outside the State. Such denial of exemption can never be treated as an indirect levy of sales tax. It only means that "if you sell the goods manufactured by you in this State, outside the State, the exemption limit will be treated to have been exhausted by you to that extent", meaning thereby that if the sales are effected outside the State the exemption limit will be denied to that extent by treating it as having been already exhausted and not available for local sales. This is achieved by accelerating the reaching of the upper limit of exemption. The purpose obviously is to prevent the revenue loss to the State because if the upper limit is reached, the exemption would cease to operate and all the sales thereafter within the State would be taxable. Such condition of exemption imposed for the purpose aforesaid would not at all affect the non-liability of the transaction, effected outside the State, to levy or imposition of sales tax by virtue of the provisions of Article 286 of the Constitution and the corresponding provisions of section 87 enacted under the Gujarat Sales Tax, 1969.

In view of the aforesaid clear pronouncement of this Court, it cannot be said that the impugned condition imposed by the Government Resolution dated 4.4.1996 was illegal or unconstitutional.

7. The learned counsel for the petitioner, however,

urged that the condition may be valid, but it would not apply to units which set up the wind farms before 4.4.1996, as such condition was not imposed when the petitioner had decided to invest a substantial amount of Rs. 3 Crores in the wind farm project.

This argument would have required serious consideration. However, in response to a specific query from the Court, the learned counsel for the petitioner stated that the transactions in respect of which the impugned letters and demand notices have been issued by the Sales Tax Officer in April/May, 2000 were in respect of copper and copper alloys and that the said transactions did not pertain to wind farm. In this view of the matter, we are at a loss to appreciate as to how the petitioner can legitimately raise the plea of promissory estoppel when the dispute in question is not about any transactions pertaining to generation or sale of electrical power from the wind farm set up by the petitioner.

8. Even proceeding on the basis that the petitioner is entitled to claim the sales tax deferment benefit in respect of the sales of copper and copper alloys, we have considered whether the petitioner has laid the necessary foundation in the petition for invoking the doctrine of promissory estoppel. The petitioner has prayed for quashing the demand letters and demand notices for sales tax on the basis of the eligibility certificate dated 14.12.1996 (Annexure A/2). That certificate provided for sales tax deferment subject to certain terms and conditions. Hence, before the petitioner's plea of promissory estoppel can be considered on merits, it is necessary to examine whether the terms and conditions stipulated in the eligibility certificate are complied with by the petitioner. It is true that the respondents (who are all authorities under the Gujarat Sales Tax Act) have not raised any dispute about non-compliance with such terms and conditions, but while exercising the extra ordinary, discretionary and prerogative writ jurisdiction under Article 226 of the Constitution, we consider ourselves duty bound to consider this aspect in view of the policy underlying the Government Resolution dated 27.1.1993 viz. that the State was granting sales tax incentives not merely for the purpose of investments being made in the State, but the real purpose was actually augmenting the generation of electricity using wind energy, in view of paucity of other natural resources like water and coal. The petitioner was, therefore, expected to show that the quantum of electricity generated by the petitioner with wind energy

was commensurate with the loss of sales tax/interest to the State exchequer for the relevant period.

9. However, there is nothing on record to show that the petitioner has complied with condition Nos. 3 and 4 subject to which the eligibility certificate dated 14.12.1996 (Annexure A/2) was issued and which are quoted hereinbelow :-

"3. The specified industrial unit shall remain in production continuously during eligible period and shall furnish details of production to this office every month.

4. The industrial undertaking shall keep wind farms running satisfactorily at least for six years from the date of commissioning. A quarterly return showing units generated from wind farm shall be furnished to this office."

Considering the fact that the grievance being made by the petitioner about applicability of the impugned condition contained in the Government Resolution dated 4.4.1996 is in respect of a product which the petitioner was already manufacturing earlier (and the sale figures do not indicate generation of electricity) and considering the fact that the petitioner has not produced any material on record to show that the above crucial conditions of the eligibility certificate are complied with and that the petition does not even contain a statement to that effect and that the petitioner has not joined the Commissioner of Electricity (to whom the particulars of generation of electricity were required to be supplied as per the above conditions) who could have thrown light on this important aspect, we do not think that any good case is made out to permanently restrain the respondent authority from acting on the impugned letters dated 28.4.2000 and 4.5.2000 and the demand notices issued on the basis thereof.

10. In above view of the matter, the decisions cited by the petitioner on the question of promissory estoppel have no relevance and, therefore, the same are not considered, nor have we considered the petitioner's plea of promissory estoppel. There was an implied promise on the part of the petitioner that it would comply with the above conditions of the eligibility Certificate. In absence of any averment or evidence about the said promise having been fulfilled, the petitioner is not entitled to invoke the equitable doctrine of promissory estoppel.

11. The petition is accordingly dismissed. Rule is discharged. There shall be no order as to costs.

(D.M. Dharmadhikari, CJ)

(M.S. Shah, J.)

sundar/-